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12 Attorneys for Defendants
13 LENNOX HEARTH PRODUCTS INC.; LENNOX
14 INTERNATIONAL INC.; LENNOX INDUSTRIES
15 INC.

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

18 KIRK KEILHOLTZ and KOLLEEN
19 KEILHOLTZ for themselves and on behalf
20 of those similarly situated,

21 Plaintiffs,

22 v.

23 LENNOX HEARTH PRODUCTS INC.;
24 LENNOX INTERNATIONAL INC.;
25 LENNOX INDUSTRIES; and DOES 1
26 through 25, Inclusive,

27 Defendants.

Case No. 4:08-cv-00836-CW (JCS)

**STIPULATION AND ORDER
MODIFYING HEARING DATE ON
MOTION FOR CLASS CERTIFICATION**

Current Hearing Date: December 3, 2009
Proposed Hearing Date: December 10, 2009
Time: 2:00 p.m.
Location: Courtroom 2

Original Complaint Filed: February 6, 2008

28 TO THE COURT AND ALL ATTORNEYS OF RECORD:

By and through their counsel of record, Plaintiffs Kirk Keilholtz and Kolleen Keilholtz (collectively "Plaintiffs"), and Defendants Lennox Hearth Products Inc., Lennox International Inc. and Lennox Industries Inc. (collectively "Defendants") hereby stipulate, in furtherance of Defendants' request, to the following:

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1 1. On July 9, 2009, the court issued a written order providing, among other things,
2 that any hearing on Plaintiffs' Motion for Class Certification would be conducted at 2:00 p.m. on
3 Thursday, November 12, 2009.

4 2. On September 18, 2009, the court approved a stipulation of the parties and issued a
5 written order providing, in pertinent part, that Plaintiffs' Motion for Class Certification would be
6 conducted at 2:00 p.m. on Thursday, December 3, 2009.

7 3. Counsel for Defendants states that a potential scheduling conflict on December 3,
8 2009, has developed in the schedule of William R. Warne, lead counsel for Defendants.
9 Specifically, Mr. Warne is lead counsel in an action pending in Sacramento County Superior
10 Court, which was scheduled for trial on November 9, 2009. However, because a courtroom was
11 unavailable on that day, the parties were ordered to return on November 30, 2009, for trial.
12 Assuming a courtroom is available, trial in that action will commence on November 30, 2009,
13 and will last for approximately three weeks. However, in the event that a courtroom is once again
14 unavailable, Mr. Warne will be able to proceed with the hearing on the motion for class
15 certification, but requests a one week continuance to allow adequate time to prepare, given that he
16 will otherwise be engaged in trial preparations up to and including November 30, 2009.

17 4. Defendants met and conferred with Plaintiffs about Mr. Warne's potential conflict
18 on December 3rd. As a result, Plaintiffs agreed to support Defendants' request, subject to
19 approval by the court, to move the hearing date on Plaintiffs' Motion for Class Certification to
20 Thursday, December 10, 2009.

21 5. Defendants further agree that absent extraordinary and unforeseen circumstances,
22 and assuming Mr. Warne's trial does not commence on November 30th or otherwise conflict with
23 the requested December 10 hearing date, and a request to attend the class certification hearing is
24 denied by the trial judge, Defendants will seek no further modifications of the class certification
25 motion schedule including the hearing date on the Motion for Class Certification.

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1 **IT IS HEREBY STIPULATED:**

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3 DATED: November 20, 2009

DOWNEY BRAND LLP

4 By: /s/ William R. Warne

5 WILLIAM R. WARNE
6 Attorney for Defendants
7 LENNOX HEARTH PRODUCTS INC.
8 LENNOX INTERNATIONAL INC.
9 LENNOX INDUSTRIES INC.

10 DATED: November 20, 2009

ARNOLD LAW FIRM


11 By: /s/ Kirk J. Wolden (as authorized on 11-20-09)

12 KIRK J. WOLDEN
13 Attorney for Plaintiffs
14 KIRK KEILHOLTZ and KOLLEEN
15 KEILHOLTZ for themselves and on behalf of
16 those similarly situated
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1 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

2 The court, having considered the Stipulation of the parties and good cause appearing,
3 hereby orders the following change to the hearing schedule on Plaintiffs' Motion for Class
4 Certification: (1) The December 3, 2009, hearing date is hereby vacated; (2) the Motion for Class
5 Certification shall be heard on Thursday, December 10, 2009, at 2:00 p.m. in Courtroom 2, before
6 the Honorable Claudia Wilken.

7 Dated: 11/23/09

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By: _____
9 HONORABLE CLAUDIA WILKEN
10 UNITED STATES DISTRICT JUDGE,
11 NORTHERN DISTRICT OF CALIFORNIA
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